

DEPARTMENT OF STATE REVENUE

03-20170215R.ODR

**Final Order Denying Refund: 03-20170215R
Withholding Tax
For Tax Years 2012-2016**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Indiana company was not entitled to refund of collection fees because it did not establish that it timely responded to Department proposed assessments and demand notices.

ISSUE

I. Tax Administration–Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *P/S, Inc. v. Ind. Dept. of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer protests the partial denial of a claim for refund.

STATEMENT OF FACTS

In November 2016 Taxpayer received a warrant for collection from the Indiana Department of Revenue's ("Department") third-party collection agency ("Agency") after Taxpayer did not respond to the Department's Proposed Assessment or the Demand Notice concerning a discrepancy over withholding tax plus penalty and interest. Since Taxpayer did not respond to the Department's notices, the tax liability eventually advanced to the warrant stage and the Agency successfully obtained payment from Taxpayer.

Taxpayer filed a Claim for Refund requesting the entire amount (which consisted of tax, penalty, interest, and collection fees) that was paid. The Department responded, granting refund of the base tax, penalty, and interest but denying refund of the collection fees. Taxpayer then filed a protest requesting refund of the collection fees. An administrative hearing was held, and this Order results. Additional facts will be provided as necessary.

I. Tax Administration–Collection Fees.

DISCUSSION

Taxpayer protests the Department's refund denial of collection fees. Taxpayer maintains that it changed its address so it did not receive any notices of potential liabilities from the Department until the Agency contacted Taxpayer. In an effort to remedy the situation, Taxpayer filed a BC-100 business closure form, but only after the Agency had contacted them. Once the BC-100 was processed the Department's records reflected that Taxpayer did not owe withholding tax for the tax years 2012-2016. At that point, the Department agreed that Taxpayer no longer owed the \$5,000 paid by Taxpayer to the Agency. Thus, Taxpayer asserts that it is entitled to a full refund because the assessment was proven incorrect based on the fact that the Taxpayer had no employees and had changed its address. The issue is whether the refund denial of collection fees was appropriate.

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC §

6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, Taxpayer paid \$5,000 once the Agency contacted it. Had Taxpayer timely closed its withholding tax account and/or informed the Department of Taxpayer's new address, Taxpayer could have remedied this situation in a more timely fashion, thus avoiding the need for the Agency's service. Instead, a discrepancy occurred because no BC-100 was filed by Taxpayer and no change of address was provided by taxpayer to the Department. The proposed assessments resulted from this lack of communication from Taxpayer to the Department.

IC § 6-8.1-8-2(b) authorizes a collection fee of ten percent whenever the Department issues a tax warrant. In addition, IC § 6-8.1-8-4(a) and (b) authorize fees for collection agencies acting on the Department's behalf. The collection fees in question are the result of an assessment which advanced to a tax warrant stage. The collection fees are a statutorily allowed amount for collection on a tax warrant, even if the liability is later shown to be in error. Further, Taxpayer has not demonstrated that the Department acted improperly at any stage of the collections process and the Department does not refund collection fees unless the Taxpayer can prove that the Department was somehow at fault. Taxpayer failed to do so in this case.

Further, Taxpayer did not timely respond to the Department's notice of proposed assessment and demand notice. In *P/S, Inc. v. Ind. Dept. of State Revenue*, the Indiana Tax Court concluded that the taxpayer was responsible for paying collection fees because it had not rebutted the presumption that it received the notices which the Department mailed. *P/S, Inc. v. Ind. Dept. of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006). The court ruled, "when an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received." *Id.* at 1054.

Similar to *P/S, Inc.*, in this case Taxpayer has asserted that it did not receive any notice from the Department. The Department mailed multiple notices to the address on Taxpayer's account. Taxpayer did not file a BC-100 to properly close its withholding account, nor did it provide any other form of notice of address change with the Department prior to contact by the Agency. The Department followed statutory procedure each step of the way. While the Agency retained a portion of the amount paid by Taxpayer as a result of completing its collection effort, the Department refunded Taxpayer the money which the Department received. The collection fees were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to refund the collection fees.

FINDING

Taxpayer's protest is respectfully denied.

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